

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICES NO. 29 and 29A-80:

MISSOULA COUNTY HIGH SCHOOL
EDUCATION ASSOCIATION,
MONTANA EDUCATION ASSOCIATION,

Complainant
and
Defendant,

- vs -

FINAL ORDER

BOARD OF TRUSTEES, MISSOULA
COUNTY HIGH SCHOOL DISTRICT,

Defendant
and
Complainant.

No exceptions having been filed, pursuant to ARM 24.26.215,
to the Findings of Fact, Conclusions of Law and Recommended Order
issued on February 6, 1981;

THEREFORE, this Board adopts that Recommended Order in this
matter as its FINAL ORDER.

DATED this 3d day of April, 1981.

BOARD OF PERSONNEL APPEALS

By *John May*
John May
Chairman

CERTIFICATE OF MAILING

I, *Jennifer Jackson*, do hereby certify and state that
a true and correct copy of the above FINAL ORDER was mailed to the
following on the 16 day of April, 1981:

Emilia Loring
HILLEY & LORING, P.C.
Executive Plaza, Suite 20
121 4th Street North
Great Falls, MT 59401

Jean Ellison
Deputy County Attorney
Missoula County Courthouse
Missoula, MT 59801

George Zellick, Superintendent
Missoula County High School Dist.
915 South Avenue
Missoula, MT 59801

Lillian Klawitter, President
Missoula County High School
Education Association
104 39th
Missoula, MT 59801

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS
IN THE MATTER OF UNFAIR LABOR PRACTICES #29 & 29A-1980:

MISSOULA COUNTY HIGH SCHOOL EDUCATION ASSOCIATION, MONTANA EDUCATION ASSOCIATION,)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER
Complainant and Defendant)	
vs.)	
BOARD OF TRUSTEES, MISSOULA COUNTY HIGH SCHOOL DISTRICT)	
Defendant and Complainant.)	

On July 30, 1980, the Complainant, Missoula County High School Education Association (hereinafter called the Association) in the above captioned matter (ULP #29-1980), filed an unfair labor practice complaint with this Board charging the Defendant, Board of Trustees, Missoula County High School District (hereinafter called the District) with violations of Section 39-31-401(1) and (5), MCA. The Complainant Association alleged that the Defendant District has refused to bargain in good faith.

The Defendant District, on August 11, 1980, filed an ANSWER to the complaint with this Board denying all violations of Section 39-31-401(1) and (5), MCA.

On August 11, 1980, Complainant District, in the above captioned matter (ULP #29A-1980), filed an unfair labor practice complaint with this Board charging the Defendant Association with a violation of Section 39-31-402(2) MCA. The Complainant District alleged that the Defendant Association has refused to bargain in good faith.

The Defendant Association, on August 21, 1980, filed an ANSWER to the complaint with this Board denying the violation of Section 39-31-402(2) MCA.

1 By ORDER issued by this Board on September 24, 1980,
2 ULP #29-1980 and ULP #29A-1980, were combined for purposes
3 of hearing.

4 A formal hearing in this matter was conducted on October
5 6, 1980, in the Conference Room, City Library, Missoula,
6 Montana. The formal hearing was conducted under authority
7 of Section 39-31-405 MCA and as provided for by the Montana
8 Administrative Procedure Act (Title 2, Chapter 4 MCA). The
9 purpose of the formal hearing was to determine if the District
10 violated Section 39-31-401(1) and (5) MCA and if the Association
11 has violated Section 39-31-402(2) MCA.

12 The Missoula County High School Education Association
13 (Association) was represented by Emilie Loring, Attorney,
14 Great Falls, Montana. The Missoula County High School District
15 (District) was represented by Michael W. Schestedt, Deputy
16 County Attorney, Missoula County.

17 STIPULATIONS

18 The parties to this matter stipulated to several facts
19 which are reported and identified in the following Findings
20 of Fact. They are interspersed, for chronological reasons,
21 with other findings.

22 ISSUES

23 Stipulated issues were as follows:

- 24 1. Whether or not the written Alteration of Master
25 Contract of May 12, 1980, accurately reflects the
26 negotiated settlement?
- 27 2. Whether or not the execution of the Alteration of
28 Master Contract on May 12, 1980, by the apparent
29 authorized agents of the Association constitutes
30 an unfair labor practice given the fact that the
31
32

1 Association contends the written agreement does
2 not reflect the negotiated settlement?

- 3 3. If the Association agreed that the salary and
4 insurance improvements were contingent upon passage
5 of a mill levy, whether the levy passed on July
6 15, 1980, constitutes the necessary pre-condition?

7
8 POSSIBLE REMEDIES

9 The parties identified the following two possible
10 remedies:

- 11 1. Order the parties back to the bargaining table.
12 2. Affirm that settlement was reached on April 2,
13 1980.

14 Final post-hearing briefs were received from the parties
15 on November 25, 1980.

16
17 FINDINGS OF FACT

18 After a thorough review of the record, including the
19 testimony of witnesses, the demeanor of witnesses and the
20 exhibits, I make the following:

- 21 1. The Missoula County High School Education Association
22 (Association), affiliated with the Montana Education
23 Association (MEA), is the recognized exclusive bargaining
24 representative for high school faculty, excluding
25 supervisors, employed by the Board of Trustees of
26 Missoula County High School (District). (Stipulated
27 Fact)
- 28 2. The extant Master Contract (Joint Exhibit #2) is effective
29 from July 1, 1979, through June 30, 1981, with a January
30 1980 opening clause on salaries and insurance benefits
31 for the 1980-81 school year. Pursuant to this reopening
32 provision, the parties negotiated for increases in

1 salaries and insurance and reached agreement on or
2 about April 2, 1980. The new provisions were ratified
3 by the Association on or about April 9, 1980. The
4 parties executed a written Alteration of Master Contract
5 (Joint Exhibit #1) on May 12, 1980, providing a Salary
6 Schedule for 1980-81 and including the revised insurance
7 provision. (Stipulated Fact)

- 8 3. The District ratified the new provisions at a regular
9 meeting of the Board of Trustees on April 9, 1980. The
10 minutes of that meeting (Joint Exhibit #3) pertaining
11 to ratification state:

12 Col. Simmons moved approval of a new salary
13 schedule which would reflect a 12.59% increase
14 for teachers for school year 1980-81, contingent
15 upon the passage of a mill levy. Included in
16 the motion was an increase in the dental
17 premium of \$1.25 per employee per month. The
18 motion was seconded by Mr. Schwanke and
19 passed with all voting in favor.

- 20 4. Joint Exhibit #1, the cover memorandum and the Alteration
21 of Master Contract, exclusive of the attached wage
22 schedule, state:

23 Missoula County High School
24 Administrative Building
25 Personnel Office

26 Missoula, Montana
27 May 12, 1980

28 TO: Mrs. Hilian Klawitter
29 President, MCHSEA
30 Sentinel High School

31 RE: Alteration of Master Contract

32 Attached is the Alteration of Master Contract for next school year. I
have explained in the text that implementation of this alteration is contingent
upon passage of the May 20th, 1980 operation levy. When you and the secretary
of MCHSEA have signed this document, please return it to me and I will prepare
the four copies you requested in your letter of May 2, 1980.

The insurance rates for next year are \$55.80 for health and \$22.25
for dental. Inclusions remain the same as this year. Please contact our in-
surance agent of record, Mr. Jim Powell, for current fee schedules.

You stated in your letter that it seem employees are receiving vary-
ing payments for the same medical procedures. Employees who feel they may not
have received the proper payment, should personally contact Mr. Powell. Claims
adjustment and interpretations are among the services he is to provide the
district.

REID E. STEVENS

Missoula County High School
Administration Building
Personnel Office

Missoula, Montana
May 12, 1980

TO: Mrs. Lillian J. Klawitter
President, MCHSEA

RE: Alteration of Master Contract

Contingent upon passage of the operational levy May 20, 1980, this memorandum shall constitute an Alteration of Master Contract between the Board of Trustees, Missoula County High School, Missoula, Montana, (hereinafter Board), and the Missoula County High School Education Association, Missoula, Montana, (hereinafter Association), to wit:

It is hereby agreed that the following two alterations shall be made to the Master Contract between the Board and the Association and shall be in full force and effect during the period July, 1980 through June 30, 1981.

1. The attached Appendix "A", 1980-81 Salary Schedule, (\$1,913 base) shall replace Appendix "A", 1979-80 Salary Schedule, (\$1,020 Base) on page 24 of the Master Contract for school years 1979-80 and 1980-81.
2. The Board agrees to continue the current health and dental insurance programs and to pay the \$1.25 increase in monthly dental premium proposed by the insurance carrier.

The Association agrees and affirms that should the May 20th, 1980 operational levy fail, the Board, in its sole discretion, may cancel this Alteration of Master Contract, rendering it totally invalid and of no force or effect whatsoever.

IN WITNESS WHEREOF, the parties have executed this Alteration of Master Contract as follows:

For Missoula County High School
Education Association

For Missoula County High School
Board of Trustees

S/Lillian J. Klawitter
President

S/K. E. Schwank
Chairman

S/Jerome Michael Ryan
Secretary

S/Reuben A. Dietert
Secretary

Dated this 12th day of May, 1980.

Dated this 12th day of May, 1980.

5. There is no dispute that the parties negotiated only a new wage schedule and insurance benefits. The Hold Harmless Statement (cited in part below) contained in the existing Master Contract (Joint Exhibit #2) was not negotiated but remained in full force and effect during the negotiations of the interim wage and insurance benefits adjustments:

HOLD HARMLESS STATEMENT

It is understood and agreed by the parties that salary and fringe benefit provisions of this Agreement are contingent upon the passage of a mill levy to support them. If said levy should fail, the parties agree to renegotiate the salary and fringe benefit provisions of this Agreement.

The Hold Harmless Statement was interpreted by Cleo Baker, Association Negotiating Team's recorder, during examination by the Hearing Examiner:

H.E.: The first sentence in the first paragraph on page one of the Hold Harmless Statement states, "It is understood and agreed by the parties that salary and fringe benefit provisions of this Agreement are contingent upon the passage of a mill levy to support them." Now, is that clause referring only to the benefits contained in this Agreement [Master Contract]? To the best of your knowledge, could you answer the question?

Baker: Yes, in this Agreement, however this was a two year contract.

H.E.: A two year contract?

Baker: "Seventy Nine - Eighty, Eighty - Eighty One.

H.E.: Are all changes of salary and fringe benefits contained in this Contract contingent upon a passage of a mill levy?

Baker: The way I read the language it is.

H.E.: If you know, does this clause affect negotiations of other agreements other than this [Master] Contract?

Baker: As I have stated before, the position as I see it is this, this is a language clause that held over into this year because the only things dealt with this year were the actual salary schedule and the insurance items.

6. The Alteration of Master Contract (Joint Exhibit #1) executed May 12, 1980, is reflective of the negotiations between the parties. More specifically, the negotiated salary schedule and insurance benefit adjustments were contingent upon the passage of the May 20, 1980, mill

1 levy. This finding is supported upon the following
2 facts:

- 3 A. As a matter of past practice and standard procedure
4 since, at least, 1971, negotiated salaries and
5 benefits have been made contingent upon a mill
6 levy passage. Mr. George Zellick, Superintendent,
7 Missoula County High School, testified that, "From
8 1971 my recommendation, my direction to Mr. Stevens
9 has always been that these salary schedules and
10 insurance benefits have to be dependent upon a
11 mill levy and my recommendation to the Board has been
12 the same." Mr. Kernit Schwanke, Chairman, Board
13 of Trustees, Missoula County High School, viewed
14 the contingency of salaries and insurance benefits
15 to the mill levy in a broader sense. Mr. Schwanke
16 testified, "I would say they'd [Board of Trustees]
17 taken a position that the whole budget was contingent
18 upon the passage of the levy." When asked if,
19 during the course of negotiations, the need for a
20 mill levy to support the proposed settlements had
21 been discussed, Mr. Dick Holmquist, Chief Spokesman,
22 Association Negotiating Team, responded, "No,
23 because its common knowledge." Ms. Baker testified
24 that general discussions of mill levy occurred
25 during negotiations, "But not in the context of
26 the salary schedule being contingent upon it
27 because it was not necessary. We were on a two
28 year contract of which a hold harmless clause
29 relative to a mill levy was already part of."
30 B. The Alteration of Master Contract (Joint Exhibit
31 #1) speaks for itself. The document (cited above)
32 clearly states the terms of the negotiated settlement.

1 C. The parties understood the agreement. The Alteration
2 of Master Contract was signed by Ms. Lillian J.
3 Klawitter, President, Missoula County High School
4 Education Association, and Jerome Michael Ryan,
5 Secretary, Missoula County High School Education
6 Association, in Reid Stevens', Director of Personnel
7 and Labor Relations, Missoula County High School,
8 office on May 12, 1980. Ms. Klawitter testified
9 that Mr. Stevens harassed and pressured her into
10 signing the Alteration of Master Contract. Ms.
11 Klawitter explained that she was "upset" because
12 of Mr. Stevens' verbal abuse and really didn't
13 read the document before signing. Testimony
14 indicated that Mr. Stevens and Ms. Klawitter did
15 exchange heated words, however, Mr. Ryan testified
16 that the heated discussion occurred after the
17 document was signed by himself and Ms. Klawitter.
18 Further, Mr. Ryan testified under direct examination
19 that, "I understood the cover letter, yes, I
20 didn't read the entire document." The cover
21 letter to the Alteration of Master Contract
22 (cited above) clearly explains that the agreement
23 is contingent upon passage of the May 20, 1980,
24 levy. Neither Ms. Klawitter nor Mr. Ryan requested
25 additional time in which to study the document
26 before signing. Lastly, considering the length of
27 the cover letter and the Alteration of Master
28 Contract (approximately one-half page each) and
29 the number of times reference is made that agreement
30 is contingent upon the May 20th levy, it is not
31 logical that a reasonable person could not understand
32 the terms.

1 D. The Association and, more specifically, Ms. Klawitter
2 was aware of the relationship between the negotiated
3 settlement (salary schedule and insurance benefits)
4 and the passage of a mill levy. Association
5 Exhibit #3, which is a letter dated May 2, 1980,
6 addressed to Mr. Stevens from Ms. Klawitter
7 states in part, "I can understand your not wishing
8 to print and distribute new salary schedules for
9 all staff until after mill levy approval. MCHSEA
10 [Association] is working on a quiet plan to help
11 achieve the mill levy passage." The purpose of
12 the letter was a request for copies of the Alteration
13 of Master Contract which were prepared and signed
14 on May 12, 1980 (see above). However, this letter,
15 dated some ten days prior to the signing of the
16 Alteration of Master Contract, clearly indicates a
17 strong relationship between the negotiated salary
18 schedules and the passage of a mill levy. In
19 addition, Mr. Dick Holmquist was asked under
20 direct examination if there was any discussion of
21 tying the negotiated settlement to any particular
22 mill levy. Mr. Holmquist replied, "Not in a specific
23 term, very general, sorts of things, there was
24 discussion of a levy which always occurs with an
25 agreement but nothing specific. Just the fact
26 that there was a levy coming up and that we, of
27 course, would have to go on it, you know, make
28 sure the teachers voted and general things like
29 that but nothing, nothing specific." Mr. Holmquist's
30 testimony surely suggests, if not indicates, that
31 some kind of an effort was being considered during
32 the course of negotiations to secure the passage
of a mill levy.

- 1 E. The negotiated settlement of salaries and insurance
2 benefits was contingent upon the passage of the
3 May 20, 1980, mill levy. As found earlier, agreement
4 between the parties on a new salary schedule and
5 insurance benefits was reached on April 2, 1980.
6 Ratification of the agreement took place by both
7 parties on April 9, 1980. The teachers conducted
8 a special meeting and the Board of Trustees
9 ratified the agreement at their regular meeting of
10 April 9, 1980 (see Findings of Fact #3 - above).
11 Testimony indicated that the Board of Trustees
12 were engaged in budget deliberations and were
13 anticipating the settlement with the teachers to
14 assist in finalizing this budget. The budget was
15 not finalized at the April 9, 1980, however, the
16 date for the mill levy election was set by the
17 Board of Trustees for May 20, 1980 (minutes of
18 April 9, 1980, meeting Joint Exhibit #3).
- 19 7. The scheduled May 20, 1980, date for the mill levy
20 election was rescheduled to June 3, 1980, because of
21 the ash fall from Mount St. Helens. The mill levy
22 failed approval of the voters.
- 23 8. On or about June 10, 1980, the Board of Trustees of
24 Missoula County High School District passed a motion
25 declaring the Alteration of Master Contract to be totally
26 invalid and of no force or effect whatsoever. (Stipulated
27 Fact) I find that the Board of Trustees decided to
28 reopen contract negotiations with the teachers at a
29 special meeting held on June 17, 1980. (minutes of
30 special meeting - Joint Exhibit #4).
- 31 9. The District notified Ms. Klavitter via three certified
32 letters that the District considered the Alteration of

1 Master Contract null and void and requested that contract
2 negotiations resume. Ms. Klawitter received the certified
3 letters of July 8, 1980; July 17, 1980; and July 28,
4 1980, on July 16, 1980; July 18, 1980; and August 5,
5 1980, respectfully. Mr. Zellick, Mr. Schwanke and Mr.
6 Stevens all testified that they did not receive any
7 official notification from the Association that indicated
8 that the Association maintained the Alteration of
9 Master Contract to be in full force and effect. The
10 District maintains that the Unfair Labor Practice
11 Charge filed by the Association on July 30, 1980, was
12 the first and only official notification that stated
13 the Association's position. There is conflicting
14 testimony that Ms. Klawitter stated the Association's
15 position at the special meeting of the Board of Trustees
16 held on June 17, 1980. Also, there is unclear testimony
17 that Ms. Klawitter mentioned the Association's position
18 to Mr. Zellick during a telephone conversation on an
19 undetermined date. I find by the preponderance of
20 evidence that the Association's first official notification
21 to the District stating the Association's position that
22 they believed the Alteration of Master Contract to be in
23 full force and effect was the Unfair Labor Practice
24 Charge filed July 30, 1980.

- 25 10. On or about July 15, 1980, the voters of Missoula County
26 approved the operational levy for Missoula County High
27 School. The District further states that this mill
28 levy was not the same levy which had previously failed.
29 (Stipulated Fact) Uncontroverted testimony of Mr.
30 Zellick indicated that the budget or mill levy that
31 failed approval of the voters on June 3, 1980, was
32 reduced by 15.7% and then re-submitted for election on

1 July 15, 1980. Mr. Stevens unchallenged testimony
2 indicated that the salaries for personnel in the teachers
3 bargaining unit comprise approximately 50% of the total
4 budget. I find that the mill levy approved by the
5 voters on July 15, 1980, was less than the mill levy
6 which was not approved on June 3, 1980. Additionally,
7 I find that approximately 50% of the total budget or
8 mill levy is comprised of salary costs for personnel in
the teachers bargaining unit.

- 9 11. On or about July 17, 1980, Reid Stevens, Personnel
10 Director of MCHS [Missoula County High School], acting
11 as Defendant's [District's] agent, issued individual
12 letters to all Certified Staff, enclosing what he
13 termed "temporary employment contracts" and informing
14 the faculty they would be paid their 1979-80 salaries
15 for 1980-81. (Stipulated Fact). The District admitted
16 that such letters were issued, however, the District
17 explains that the faculty was also informed that a new
18 contract would be issued following further negotiations.
19 District Exhibit #3, letter dated July 28, 1980, from
20 Mr. Stevens addressed to Ms. Klawitter explains said
21 individual letters or contracts:

22 I explained in my letter that we have issued
23 contracts to all teachers based upon last year's
24 salary schedule. We are anxious to begin negotiating
25 a new schedule, and we feel this can be accomplished
26 in a short time. In the meantime, all provisions
27 of the 1979-81 Master Contract, except the teacher
28 salary schedule and insurance benefits, remain in
effect for the duration of the contract. (Article
15, page 19.) The Board of Trustees authorized
payment of the July insurance premium. However,
they have not authorized any further payment of
insurance premiums at the new rate.

29 I find that the individual contracts were subordinate
30 to the Master Agreement and would not replace any negotiated
31 agreement between these parties.

- 32 12. Ms. Klawitter, as President of the Association, had
authority to sign a contract in behalf of the Association.

1 Mr. Thomas Lukowski, immediate past President of the
2 Association, testified that historically the President
3 of the Association would have authority to sign a negotiated
4 contract after such contract was ratified by the full
5 membership. A review of the Association's Constitution
6 (Association Exhibit #1) does not refute Mr. Lukowski's
7 testimony.

- 8 13. Ms. Klawitter testified that during the Board of
9 Trustees meeting held April 9, 1980, Mr. Stevens handed
10 her a document to sign which allegedly represented the
11 negotiated settlement. Ms. Klawitter explained the
12 document stated the salary and insurance benefit increases
13 but did not state anything about such increases being
14 contingent upon passage of a mill levy. According to
15 Ms. Klawitter, she was to sign the document then Mr.
16 Stevens was to get the signature of the Chairman of the
17 Board of Trustees and deliver a copy of the signed
18 document to her. Mr. Stevens testified that he could
19 not remember such a document because he couldn't recall
20 taking time in preparing such a document. Under further
21 examination Mr. Stevens was asked why it would require
22 so much time to prepare such a short document. Mr.
23 Stevens replied:

24 Well, whenever I prepare anything for a
25 contract I take as much time as I think I
26 need to make it right. And I knew that I did
27 not prepare anything like those two paragraphs
28 for her, to present to her as an Alteration
29 to Contract.

30 Considering the facts that the alleged document could
31 not be physically examined; Ms. Klawitter was the only
32 witness who testified to its existence; Mr. Stevens' logical
33 explanation (above) to its non-existence; and the physical
34 existence of the signed Alteration of Master Contract (Joint
35 Exhibit #1), I cannot find that the alleged document existed.

DISCUSSION

1 In the Spring of 1980, the parties in this matter
2 negotiated salary and insurance benefit increases for the
3 second year of a two year contract. Only the two interim
4 matters were negotiated; the remaining Master Contract
5 remained intact. Verbal agreement was reached on April 2,
6 1980, and the two negotiating committees took verbal agreement
7 back to their respective sides for ratification. Both the
8 Association and the District ratified the negotiated settlement
9 on April 9, 1980. The Association argues that on the evening
10 of April 9, 1980, during the Board of Trustees meeting, Ms.
11 Klawitter signed a document in behalf of the Association.
12 This alledged document purportedly set forth the negotiated
13 settlement. However, I could not find that the alledged
14 document existed (see Findings of Fact #13).

15 On May 12, 1980, the parties did sign an Alteration of
16 Master Contract (see Finding of Fact #4). This document was
17 signed by Ms. Klawitter and Mr. Ryan for the Association.
18 Mr. Schwanke and Mr. Diattert signed in behalf of the District.
19 There was some conflicting testimony pertaining to Ms.
20 Klawitter being pressured into signing the Alteration of
21 Master Contract. However, I found to the contrary.

22 A mill levy election for the Missoula County High
23 School District voters scheduled for May 20, 1980, was
24 rescheduled to June 3, 1980, because of the ash fallout from
25 Mount St. Helens. On June 3, 1980, the voters rejected
26 the mill levy. This caused the Board of Trustees to hold a
27 special meeting on June 17, 1980, to reconsider the budget.
28 In addition, the Board of Trustees voted to reopen negotiations
29 with the Association in conformance with the Alteration of
30 Master Contract. The District notified the Association,
31 more specifically Ms. Klawitter, by three certified letters
32 that the District desired to return to the bargaining table.

1 The Association did not respond officially to the request for
2 further negotiations (see Finding of Fact #9).

3 The District reduced their operational mill levy of
4 June 3, 1980, by some 15.7% and submitted it for election on
5 July 15, 1980. The voters did approve this lesser mill
6 levy.

7 The Association argues, first of all, that the Alteration
8 of Master Contract signed on May 12, 1980, is not reflective
9 of the negotiated settlement. The Association maintains
10 that the salary and insurance benefit increases were not
11 contingent upon the passage of the May 20, 1980 (held on
12 June 3, 1980) mill levy. Secondly, the Association argues
13 that if it is found that the negotiated settlement is contingent
14 upon the passage of "a" mill levy, the mill levy which was
15 approved on July 15, 1980, would constitute the pre-condition.
16 I found that the Alteration of Master Contract of May 12,
17 1980, is reflective of the negotiated settlement. Further,
18 I found that the agreement was contingent upon the May 20/June
19 3, 1980, mill levy. I cannot agree with Association's
20 argument that because of the language in the Hold Harmless
21 Statement (see Findings of Fact #5) and the motion made by
22 Col. Simmons (see Finding of Fact #3) that just "a" mill
23 levy passage would constitute the requirement. It would be
24 absurd to accept the philosophy that no relationship exists
25 between a proposed budget and the specific means to fund
26 that particular budget. One can readily assume that the
27 District compiled their proposed budget based upon the
28 theory that the voters would adopt a mill levy to support
29 it. When that mill levy failed the budget had to be redesigned
30 or more specifically, reduced. The mill levy, eventually
31 adopted on July 15, 1980, is reflective of the revised or
32 "new" budget.

1 The Association charged the District in failing to
2 bargain in good faith in that the District did not implement
3 the negotiated salary and insurance benefit increases after
4 passage of the July 15, 1981, mill levy. The District was
5 correct in maintaining that the negotiated settlement was
6 contingent upon passage of the May 20/June 3, 1980, mill
7 levy. Also, the District was correct in requesting that the
8 Association return to the bargaining table.

9 The District counter-charged that the Association
10 failed to bargain in good faith in that the Association had
11 taken a position that the May 12, 1980, Alteration of Master
12 Contract did not reflect the negotiated settlement after
13 duly authorized representatives of the Association had
14 signed the document. In addition, the District had charged
15 that the Association had failed to return to the bargaining
16 table after being requested to do so. The District had the
17 option under the terms of the May 12, 1980, Alteration of
18 Master Contract to nullify that agreement upon failure of
19 the May 20, 1980, mill levy passage (see Findings of Fact
20 #4). The mill levy did fail and the District did opt to
21 nullify the agreement. Further, the District requested the
22 Association to return to the bargaining table. However, the
23 District's official request for further negotiations was not
24 received by the Association until July 16, 1980 - one day
25 after the second mill levy had passed on July 15. The
26 Association did ignore the requests for negotiations because
27 it had taken a position that the Alteration of Master Contract
28 should remain in full force because of passage of "a" mill
29 levy. Returning to the bargaining table would have compromised
30 their position and the Association had the right to litigate
31 its claim. (See Mine Workers, Local 184, 238 NLRB No. 214,
32 99 LRM 1670 (September 29, 1978)).

CONCLUSIONS OF LAW

The Board of Trustees, Missoula County High School District did not violate Section 39-31-401(1) or (5) MCA. The Missoula County High School Education Association, Montana Education Association did not violate Section 39-31-402 (2) MCA.

RECOMMENDED ORDER

It is hereby ordered that Unfair Labor Practices #29 & 29A - 1980 be dismissed. It is further ordered that the parties in this matter return to the bargaining table and negotiate salary and insurance benefits for the 1980-1981 school year.

SPECIAL NOTE

In accordance with Board's Rule ARM 24.25.107(2), the above RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless written exceptions are filed within 20 days after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER upon the parties.

DATED this 6th day of February, 1981.

BOARD OF PERSONNEL APPEALS

BY

Stan Gerke

Stan Gerke
Hearing Examiner